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July 27, 2012

VIA OVERNIGHT MAIL

Illinois EPA
Division of Public Water Supplies
Attn: Andrea Rhodes, CAS #19
P.O. Box 19276
Springfield, IL 62794-9276

Re: Violation Notice: Midwest Generation, LLC, Crawford Generating Station
Identification No.: 6280
Violation Notice No.: W-2012-00055

Dear Ms. Rhodes:

In response to the above-referenced June 11, 2012 Violation Notice ("VN"), received on June 13, 2012, this written response is timely submitted on behalf of the Midwest Generation, LLC (MWG), Crawford Generating Station (Crawford). MWG also requests a meeting with the Illinois Environmental Protection Agency ("Illinois EPA" or the "Agency") to discuss the VN and information provided in this response.

MWG regrets that the Illinois EPA decided to issue the VN because MWG has tried to work cooperatively with the Agency concerning the hydrogeologic assessment of the storm water basin, "Basin 16," at Crawford, which the VN inaccurately refers to as an "ash impoundment." MWG cooperated with the Agency even though it had significant concerns about and objections to how the Agency has proceeded in this matter.[1] Nevertheless, MWG complied with the Agency's request that it conduct a hydrogeologic assessment of the area around the basin and followed its requirements and comments for how the hydrogeologic assessment should be conducted, even though it was under no legal obligation to do so.[2] At no time however did MWG agree that the scope and nature of the hydrological assessment the

[1] See, *e.g.*, MWG (B. Constantelos) letter to Illinois EPA (A. Keller) dated July 15, 2009. MWG is also working cooperatively with the USEPA with regards to the Coal Combustion Residuals Proposed Rules, EPA-HQ-RCRA-2009-0640, and is trying to coordinate the responses and requirements of both Agencies. USEPA first issued the proposed rules on June 21, 2010, and requested additional comments and information on Oct. 12, 2011. The additional information comment period closed on November 14, 2011, and MWG is now waiting for the USEPA to issue the final rule.

[2] MWG continues to reserve its objection that the Illinois EPA did not have the legal authority to require the hydrological assessments of the ash pond under Sections 4 or 12 of the Illinois Environmental Protection Act (the "Act") or the Groundwater Quality Regulations, 35 Ill. Adm. Code Part 620.

Agency required it to perform would provide any basis for concluding that the small amount of ash that is temporarily accumulated in the runoff basin was impacting groundwater. The alleged violations in the VN are based solely on the results of the hydrogeologic assessment MWG performed at the Agency's request. The results of the hydrogeologic assessment do not show that runoff Basin 16 at the Crawford Station is impacting the groundwater and do not provide the necessary evidence to support the alleged violations contained in the VN.

Well prior to the issuance of this VN, MWG met with the Agency to discuss the groundwater monitoring results and to discuss cooperatively how to proceed based on those results, including what additional actions, if any, the Agency believed were necessary. The Agency told MWG that it had not yet decided how to proceed. The next development was the issuance of the VN. The VN itself provides no information concerning the basis for the Agency's apparent conclusion that Basin 16 is the cause of the alleged groundwater impacts, other than the conclusory statement that "[o]perations at ash impoundments [sic] have resulted in violations of the Groundwater Quality Standards." The VN also provides no information concerning the nature or type of corrective action which the Agency may deem acceptable to address the alleged violations. The Agency is not pursuing this matter in a way that allows MWG to prepare an effective response or a Compliance Commitment Agreement.

This letter provides a detailed response to each of the alleged violations in Attachment A of the VN to the extent possible given the lack of information provided in the VN. It also advances MWG's general objection to the legal sufficiency of the notice of the alleged violations contained in the VN. MWG maintains that the Illinois EPA cannot prove the alleged violations in the VN, and does not, by submitting this response, make any admissions of fact or law, or waive any of its defenses to those alleged violations.

I. General Objection to the Legal Sufficiency of the Violation Notice

The VN does not comply with the requirements of Section 31 of the Act. Section 31(a)(1)(B) of the Act requires the Illinois EPA to provide a detailed explanation of the violations alleged. 415 ILCS 5/31(a)(1)(B). Under the Act, MWG is entitled to notice of the specific violation charged against it and notice of the specific conduct constituting the violation.[3] The VN fails to provide adequate notice to MWG of either the alleged violations or the activities which the Agency believes are necessary to address them. The VN states that "[o]perations at ash impoundments have resulted in violations of the Groundwater Quality Standards...." (Violation Notice, Attachment A, page 1, 1st paragraph) No further description of the alleged "ash impoundments" is provided in the VN. Multiple ash impoundments do not exist at the Crawford Station. It is impossible to identify from the contents of the VN what operations or activities at the Crawford Station the Agency is claiming are the cause of the alleged violations.

[3] *Citizens Utilities Co., v. IPCB*, 9 Ill.App.3d 158, 164, 289 N.E.2d 642, 648 (2nd Dist., 1972) (a person is entitled to notice of the specific violation charged against it and notice of the specific conduct constituting the violation). *See also, City of Pekin v. Environmental Protection Agency*, 47 Ill.App.3d 187, 192, 361 N.E.2d 889, 893 (3rd Dist., 1977.

Absent an accurate or complete description of the activities or operations that the Agency is alleging caused the violations, it is also not possible to identify what action might be necessary to resolve them. Attachment A to the VN states: "Included with each type of violation is an explanation of the activities that the Illinois EPA believes may resolve the violation." However, no such explanation is provided in the VN. In sum, the VN fails to comply with the legal requirement that it include a detailed explanation of the violations alleged, does not inform MWG of the specific conduct constituting the alleged violations and provides no notice of what is necessary to resolve the alleged violations. The Section 31 process is based on fundamental principles of due process. MWG should not have to speculate about what activities it allegedly engaged in that caused the violations and how to address them to resolve the alleged violations. In the absence of this material, statutorily-required information, the Agency also has effectively denied MWG's statutory right to formulate an acceptable Compliance Commitment Agreement to submit for the Agency's approval.

The VN is also deficient regarding its explanation of what laws MWG has allegedly violated. The VN solely alleges that MWG violated "Section 12" of the Act. 415 ILCS 5/12. It does not provide any further specification as to which of the provisions of Section 12 MWG has allegedly violated. Sec. 12 of the Act has nine subsections, consecutively numbered (a) through (i). Each of these subsections describes a different and distinct water pollution prohibition. 415 ILCS 5/12(a)-(i). However, the VN issued to MWG does not identify which of the nine subsections the Agency is alleging MWG violated. Based on the contents of Section 12 of the Act, the Agency is taking the position that MWG violated each and every one of the provisions of Section 12. Based on the relevant facts, it is highly unlikely that this is the intent of the VN. Therefore, the VN's general reference to Section 12 of the Act, without any other explanation, is not a "detailed explanation of the violations." This is yet another example of how the VN fails to provide MWG with adequate notice as a matter of law and thereby violates MWG's due process rights.[4]

By failing to provide a detailed explanation of the violations and any explanation of the activities that the Illinois EPA believes may resolve the violations, , the Illinois EPA has effectively denied MWG the opportunity to properly and thoroughly respond to the alleged violations and to make an acceptable offer to resolve them. The VN's deficiencies conflict with the intent and purpose of Section 31 of the Act, which is to avoid unnecessary litigation. Therefore, MWG respectfully requests that Illinois EPA rescind the VN and suspend any further enforcement action unless and until it has taken the necessary actions to correct and cure the legal deficiencies in the notice of the alleged violations by following the statutory requirements under Section 31(a)(1)(B) of the Act. 415 ILCS 5/31(a)(1)(B).

[4] *See, e.g., Grigoleit Co. v. IEPA*, PCB 89-184, slip op at p. 11 (November 29, 1990) (Failure to notify permit applicant of alleged violations and provide an opportunity to provide information in response was a violation of applicant's due process rights).

II. The Crawford Station is Closing and No Additional Enforcement is Necessary

For purposes of this response, MWG has assumed that Basin 16 is the subject of the VN. Basin 16 is the only structure operated at the Crawford Station which contains any ash. MWG maintains that the Crawford Station's Basin 16 is not releasing constituents into the groundwater. However, the Crawford Station, including the subject basin, will cease operations not later than December 31, 2012. Therefore, even assuming for argument's sake that ceasing operation of Basin 16 is necessary to resolve the alleged violations, which MWG denies, this will be done shortly. It effectively responds to and addresses the VN's allegation that "operations at ash impoundments" have resulted in the alleged violations.

Because Basin 16 will be shut down not later than December 31, 2012, this action dispenses with the need for any additional enforcement of the alleged violations. Certainly, once the basin is no longer operating, further enforcement action would only be punitive and unnecessary to securing compliance with the Act. 415 ILCS 5/*et seq*. The purpose of the enforcement provisions under Sections 31 and 42 of the Act is to provide a method to aid compliance with the Act.[5] Accordingly, as interpreted by the Illinois courts, once compliance is achieved, no further enforcement is necessary.[6] This is particularly true when compliance is achieved by a facility ceasing operations.[7] The Crawford Station will cease operations in less than two months. The purpose of the enforcement provisions in the Act, to achieve compliance, will be accomplished long before any additional enforcement could or should occur, making any additional enforcement both punitive and unnecessary.[8] Therefore, MWG respectfully requests that the Agency accept the proposed CCA described below which makes the impending shut down of the Crawford Basin 16 a binding commitment.

III. Response to Alleged Violations in the VN

Subject to and without waiving its objections to the legal sufficiency of the VN, and recognizing the alleged violations will very soon be moot, MWG nevertheless has attempted to discern the legal basis for the alleged violations and to prepare this response in defense to those allegations based on various assumptions. MWG reserves the right to supplement this response, including by submitting a separate response should the Agency provide the legally required notice under Section 31 of the Act.

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[5] *Southern Illinois Asphalt Co., Inc. v. IPCB*, 60 Ill.2d 204, 207, 326 N.E.2d 406, 408 (1975) (Court held assessed penalty inappropriate because defendant had ceased operating prior to filing of complaint).

[6] *Park Crematory, Inc. v. IPCB*, 264 Ill.App.3d 498, 506-507, 637 N.E.2d 520, 526 (1994) (Court found that Agency should not have continued enforcement of environmental violations because Respondent acted in good faith and was in full compliance before the matter was referred to the Illinois Attorney General).

[7] *See Southern Illinois Asphalt*, 60 Ill.2d. at 210. Moreover, the longer the time period between the cessation of the alleged violation and the commencement of the enforcement proceeding, *i.e.,* filing a complaint, the more likely such enforcement is considered only punitive and having no relation to securing compliance with the Act. *See, e.g., City of East Moline v. IPCB,* 136 Ill.App.3d 687, 693-694, 483 N.E.2d 642, 64 (1985)

[8] *Park Crematory, Inc,* 264 Ill.App.3d at 507.

The VN alleges that "operations at ash impoundments" at MWG's Crawford Station have caused exceedances of the groundwater quality standards in 35 Ill. Admin. Code Part 620, thereby violating Section 12 of the Act and the underlying groundwater regulations in 35 Ill. Admin. Code Part 620. It is undisputable that the Agency has the burden to prove these alleged violations both in proceedings before the Illinois Pollution Control Board (the "Board") and in the courts.[9] However, the groundwater monitoring data on which the Agency primarily, if not solely relies, to assert these violations is not sufficient, legally or technically, to prove that any "ash impoundment" is the source of the alleged groundwater impacts. Further, if Basin 16 is the subject of the VN, its operation is not a likely source of the alleged groundwater impacts.

To support its defense to the alleged violations, MWG has set forth below a description of: (1) the condition and use of Basin 16 at Crawford; (2) the hydrogeologic assessment performed at the Crawford Station; (3) the site hydrogeology; and (4) why the analytical data from the monitoring wells does not establish that the subject basin is the source of the alleged exceedances of the groundwater standards.[10] In addition, for certain of the alleged exceedances, additional information not considered by the Agency shows that it is either more likely, or at least as likely, that the source of the alleged exceedance is something other than Basin 16. In either case, the Agency cannot sustain its burden to prove the alleged violations.

A. The Condition of Basin 16

As previously noted, the VN concerns the Crawford Station "ash impoundments." The term "ash impoundment" as applied to the Crawford Station is a misnomer. This basin is distinguishable from a typical ash pond both in the way it is constructed and how it has been used. It is more accurately described as a storm water basin which receives storm water runoff that contains small quantities of ash. It has never been considered or referred to by the Station as an "ash pond." It is neither used as a disposal site for ash nor is the flow it receives ash slurry that is typically discharged to an "ash pond." Instead, the pond receives storm water runoff from the hydrobin[11] area. The storm water runoff is mostly water with only a minor amount of ash.

Given its limited purpose to collect storm water runoff from the hydrobin area, unlike the typical ash pond, the Crawford pond is small and relatively shallow. It is approximately 70 feet long and 50 feet wide. Its sides slope down to the pump enclosure that services the basin, to a

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[9] Section 31(e) of the Act provides in relevant part: "In hearings before the Board under this Title, the burden shall be on the Agency...to show either that the respondent has caused or threatened to cause...water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof." 415 ILCS 5/31(e); *Citizens Utilities v. IPCB*, 9 Ill. App. 3d 158, 164, 289 N.E.2d 642, 646 (1972) (the Agency has the burden of proof in enforcement actions).

[10] In preparing this response, MWG closely reviewed the groundwater monitoring reports previously submitted to the Agency for the monitoring wells which are identified in the VN. In the course of this review, some data transcription errors were found in the previously submitted data tables included in the groundwater monitoring reports. Copies of the corrected data tables are enclosed. The tables are annotated to identify the nature of the corrections made to the previously submitted reports. The most significant changes are that the values for monitoring wells MW-1 and MW-2 for the December 8, 2010 sampling event were inadvertently transposed.

[11] The hydrobin receives the ash slurry and separates the ash. The ash slurry is not discharged to the pond.

depth of only approximately 5 feet from grade level. The bottom is lined with asphalt. The pump enclosure is 22 feet long by 11 feet wide by 12 feet deep and is made of concrete. Pursuant to the terms of the Station's NPDES Permit, the basin and pump enclosure are part of the Station's stormwater management controls. They are managed pursuant to the terms of the Station's Storm Water Pollution Prevention Plan (SWPPP). The Agency has never indicated to MWG that its storm water management controls are in any way deficient or in violation of its NPDES Permit terms and conditions. MWG's operation of Basin 16 has been carried out in accordance with the terms and conditions of the NPDES Permit. Under Section 12(f) of the Act, compliance with the terms and conditions of any permit issued under Section 39(b) of the Act is deemed compliance with this subsection. Moreover, the ash particles that settle out from the runoff in the basin are periodically removed, which minimizes any potential for leakage of ash related constituents from the basin to groundwater. Only a small amount of ash temporarily accumulates in Basin 16. Whenever the ash is removed, MWG visually inspects the condition of the asphalt and the concrete in the adjacent pump pit. To date, MWG has not observed either cracks in the asphalt or concrete, or any separation in concrete seams within the pump pit, that would have caused the alleged groundwater exceedances. The nature of the Basin 16 operations and construction do not support the conclusion that the basin is a source of water pollution or a water pollution hazard.

The VN contains no facts concerning the condition of Basin 16 that would indicate it is allowing ash constituents to escape. For example, the Agency does not, and we submit that it could not, allege that there are any breaches in the integrity of the asphalt or concrete that are allowing ash constituents to be released to the groundwater. The Agency similarly does not claim that the asphalt liner is inadequate to prevent the migration of constituents. In the absence of such evidence, it is certainly far more likely than not that the existing Basin 16 at the Crawford Station is not the source of the groundwater impacts alleged in the VN.

B. Hydrogeologic Assessment and Site Hydrology

The VN appears to be based on the flawed premise that the hydrogeologic assessment which the Agency directed MWG to perform in the vicinity of Basin 16 would be sufficient to identify the basin as the source of any elevated levels of constituents in the groundwater. This is simply not the case. The results of the hydrogeologic assessment at best give rise to more questions about the source of the alleged groundwater impacts, and do not prove that the existing basin is the source of those impacts.

Based on the results of the hydrogeologic assessment, it generally appears that groundwater flows in a north to south direction. As approved by Illinois EPA, two monitoring wells were installed around Basin 16, monitoring wells MW-1 and MW-2. Monitoring well MW-1 is located to the north-northeast of the basin and monitoring well MW-2 is located south-southwest of the basin. The wells are approximately 150 feet apart. Throughout the quarterly groundwater monitoring, the groundwater elevations recorded in MW-1 are consistently higher than those recorded in MW-2. Further, based on visual observations, the surface water in the nearby Chicago Sanitary and Ship Canal, located to the south of Crawford Station, is consistently

lower than in both monitoring wells MW-1 and MW-2. All of this information indicates that the general direction of the groundwater flow beneath the basin is in a southerly direction. Therefore, monitoring well MW-1 is located up-gradient of both the Basin 16 and monitoring well MW-2.

Based on the indicated southerly groundwater flow direction, a comparison of the monitoring results from the two monitoring wells clearly does not support the contention that Basin 16 is the source of the alleged groundwater impacts. The distribution and observation of parameter concentrations is not consistent with the basin being the source of the impacts identified in the VN. In fact, as explained below, the more defensible conclusion is that the basin is not the source of these impacts.

First, the monitoring data from both MW-1 and MW-2 has not shown any exceedances of the boron Class 1 groundwater standard in any of the quarterly monitoring events which are the subject of the VN. Boron is a parameter closely associated with leachate from coal ash management facilities. The Agency's VN does not explain how, in the absence of any boron exceedances, the conclusion that the basin is causing alleged violations of the groundwater standards is legally justifiable.[12]

For the same reason, similar sulfate concentrations in both the upgradient and down gradient wells do not establish that Basin 16 is the source of the groundwater impacts. In fact, the sulfate concentrations in the upgradient wells reach higher concentrations than in the downgradient wells. This distribution pattern for sulfate is inconsistent with the Agency's conclusion that the basin is the cause of these groundwater exceedances.

In addition to the absence of any boron exceedances and the pattern of sulfate concentrations in both the upgradient and downgradient monitoring wells, the data shows that the levels of the remaining elevated parameters detected in MW-1 are higher than those in the downgradient MW-2. Again, the reverse should be true for these parameters if Basin 16 is the source of these groundwater impacts. There are three alleged exceedances of the iron groundwater standard in upgradient well MW-1; there are no alleged iron exceedances in the downgradient well MW-2.[13] There are an equal number of alleged manganese exceedances in both MW-1 and MW-2. However, the downgradient concentrations of manganese are consistently lower than those recorded in the upgradient MW-1 well. The results for total dissolved solids (TDS) are similar, with six alleged exceedances in both MW-1 and MW-2. Except for only one of the six sampling events, the December 2011 event, the concentrations of TDS have been consistently higher in the upgradient well MW-1. Finally, a similar pattern is

[12] Further, the fact that boron is only slightly elevated in both upgradient and downgradient monitoring wells is additional evidence that ash accumulated temporarily in the runoff basin is not the source of these groundwater impacts.

[13] Although the VN alleges that there are four exceedances of iron in MW-1, a review of the previously submitted groundwater monitoring reports has identified various transcription errors, including one for iron. Accordingly, a review of all of the previously reported monitoring results was undertaken and a table showing the corrected monitoring results is enclosed.

repeated in the case of chloride. There are six detected chloride exceedances in both the upgradient and downgradient wells.[14] Except for the first of the six sampling events, the concentrations of chloride have been consistently higher in the MW-1 upgradient well. The pattern of distribution of the constituents detected in the monitoring results between MW-1 and MW-2, when coupled with the absence of boron exceedances in either well, supports the finding that Basin 16 is not the source of these alleged groundwater impacts.

For two of the three remaining parameters which are the subject of the VN's allegations, antimony and pH, the allegations are based on isolated monitoring well results from a single sampling event that does not recur in any of the other five quarterly sampling events. These isolated detections are not consistent with the Basin 16 being the source of these exceedances. Moreover, isolated exceedances that are not reproducible over six, consecutive quarters of sampling suggest that the single, unconfirmed exceedance was an anomaly and is not representative of actual groundwater quality conditions.

In sum, the pattern of the constituent concentrations across monitoring wells MW-1 and MW-2, including repeatedly observing higher concentrations of constituents in the upgradient well, clearly does not support the contention that Basin 16 is the source of the alleged groundwater standards exceedances. The data are more consistent with the opposite conclusion, namely that Basin 16 is not the source of the alleged exceedances.

C. The Crawford Basin 16 Is Not Causing Groundwater Exceedances

Because the Agency failed to specify which of the provisions of Section 12 of the Act MWG allegedly violated, MWG has had to speculate to identify the potential Section 12 violations this response needs to address. As stated above, MWG objects to the vagueness of, and legally deficient notice provided by, the VN and reserves its right to respond further when and if the Illinois EPA properly identifies the provisions of Section 12 on which it is relying.

For purposes of this response, based upon the regulations cited by the Agency in the VN, MWG has assumed that the Agency's alleged violations of Section 12 are limited to Section 12(a), which prohibits causing or allowing water pollution, and to Section 12(d), which prohibits causing or allowing the creation of a water pollution hazard. 415 ILCS 5/12(a), (d). Based on these assumptions regarding the substance of the Illinois EPA's alleged violations, MWG submits that Illinois EPA cannot show that the Basin 16 caused or allowed water pollution or created a water pollution hazard.

The analytical results show that there is no causal relationship between Basin 16 and the alleged groundwater exceedances. Neither the boron nor the sulfate levels detected in the monitoring events support the conclusion that the basin is the source of these impacts. Rather, taken together, they lend more support to the conclusion that Basin 16 is not the source of these impacts. Further, for most of the parameters, the concentrations detected in the monitoring

[14] The VN alleges five chloride exceedances, the corrected enclosed table shows there are six.

events are higher in the up-gradient well MW-1 than in the down-gradient MW-2 well. For the remaining parameters, the necessary reproducibility of a groundwater impact in more than one, single monitoring event is absent.

To show a violation of Section 12(a) and 12(d), there must be a showing not only of the presence of a potential source of contamination, but also that it is in sufficient quantity and concentration to render the waters harmful. *Bliss v. Illinois EPA,* 138 Ill. App. 3d 699, 704 (1985) ("mere presence of a potential source of water pollutants on the land does not necessarily constitute a water pollution hazard"). In other words, there must be a causal link between the potential source and the water or groundwater. The groundwater monitoring data on which the Agency relies does not establish this essential causal link between Basin 16 and the groundwater. Therefore, the Agency has failed to meet its burden to prove that the pond is the cause of the alleged exceedances of the groundwater standards as required to prove a violation of Sections 12(a) or 12(d) of the Act. 415 ILCS 5/12(a), (d).

The Agency also alleges violations of the groundwater quality regulations based on exceedances of the groundwater quality standards in 35 Ill. Admin. Code § 620.401. There is no violation here of Section 620.401. Section 620.401 solely provides the legal criteria that groundwater must meet the standards appropriate to the groundwater's class. It is a foundational regulation, allowing for different classes of groundwater to meet different groundwater standards. It is not a prohibition regulation. There is no conduct prohibited by this section of the regulations in which MWG is alleged to have engaged. MWG cannot and did not violate Section 620.401.

The remaining alleged groundwater regulation violations, Sections 620.115, 620.301, 620.405, and 620.410 of the Board Regulations, are all based on the Agency's contention that MWG's operation of Basin 16 has caused the exceedances of the groundwater standards detected in the monitoring data. To sustain these allegations, the Agency must show that MWG caused a discharge of the subject constituents from the basin which in turn caused the exceedances of the groundwater standards.[15] The relevant facts and circumstances do not support either conclusion.

The use and condition of Basin 16 does not support a finding that it is releasing constituents to the groundwater. It is not an ash pond used to settle out ash from slurry. It is used to collect storm water from a portion of the plant that where run-off comes into contact with ash and hence, contains a small amount of ash. It is not a disposal site. Any ash residue is regularly removed from the basin by MWG. Moreover, asphalt, which lines this basin, is generally considered an impermeable barrier to prevent/minimize the release of constituents. For all of these reasons, the evidence shows that Basin 16 is not the source of the alleged exceedances of the groundwater standards.

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[15] *See People of the State of Illinois v. ESG Watts, Inc.*, PCB 96-107 slip op. at p. 41 (February 5, 1998) (By finding the respondent caused a discharge of constituents into the groundwater causing a violation of the Class II Groundwater standards, the Board found the respondent also violated 35 IAC §§ 620.301 and 620.115).

Similarly, the groundwater data on which the Agency relies does not provide a sufficient scientific or technical evidentiary basis on which to conclude that Basin 16 is causing the alleged groundwater exceedances. The essential "causal link" between the basin and the elevated constituents in the groundwater is missing. Particularly in the absence of any boron exceedances, the groundwater quality downgradient versus up gradient of the basin does not evidence a release of ash constituents from the basin. The elevated upgradient levels of virtually all the subject constituents refute the allegation that the downgradient basin is causing these impacts. The isolated, unconfirmed exceedances for pH and antimony are woefully insufficient to prove that there are any actionable groundwater impacts for these two constituents.

Because the evidence does not show that Basin 16 has caused a release of any contaminants that are causing the groundwater exceedances, the Agency's VN does not support its claims that MWG has violated Sections 620.405 or 620.301 of the Board regulations. Accordingly, MWG also has not violated Section 620.115 of the Board regulations.

IV. Compliance Commitment Agreement

This VN should not have been issued. Given the absence of proof that Basin 16 is the cause of the alleged groundwater exceedances, the Agency's request for a Compliance Commitment Agreement (CCA) is an attempt to compel MWG to conduct unnecessary corrective action to resolve the alleged violations.

However, the entire Crawford facility will cease operating not later than, December 31, 2012. The small amount of ash residue present in the basin will be removed as part of the Station's closure. Solely for purposes of settling this VN expeditiously, and avoiding further enforcement, these previously planned actions are relied upon here to resolve the alleged violations without any admission that ceasing basin operations are necessary to address the alleged violations.

Further, as the hydrogeologic assessment showed, there is no threat to human health presented by the alleged exceedances of the groundwater standards. There are no potable water wells within the 2,500 foot radius of the Site. In fact, the City of Chicago has an ordinance prohibiting the potable use of groundwater within its city limits.[16] In the absence of any potable groundwater receptors or use, groundwater at the Crawford site does not pose any risk to human health; this is further support for a decision that additional enforcement is unnecessary.

Because MWG's preference is to cooperate with the Agency in this matter, MWG presents here a proposed CCA that should be acceptable based on the relevant facts and circumstances. The proposed CCA terms are as follows:

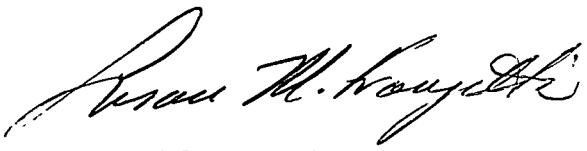
A. The Crawford Station will shut down no later than December 31, 2012. As a part of closing the facility, MWG will cease operation of Crawford Basin 16.

[16] Chic. Muni. Code: 11-8-390

B. Any ash remaining in Basin 16 will be removed as part of the closure of the Crawford Station. MWG is working to identify a specific date by which the ash will be removed and will supply a proposed date to the Agency as soon as possible.

This letter constitutes our response to, and proposed CCA for, the Violation Notice W-2012-00055. MWG also reserves the right to raise additional defenses and mitigation arguments as may be necessary, in defense of the allegations listed in the Violation Notice in the event of any future enforcement. We look forward to discussing the above information further at the soon to be scheduled meeting with the Agency's representatives. Please contact me to schedule a mutually convenient date for the meeting.

Very truly yours,



Susan M. Franzetti
Counsel for Midwest Generation, LLC

Enclosures

cc: Maria L. Race, Midwest Generation, LLC

Table 3

GROUNDWATER ANALYTICAL RESULTS - AMENDED JULY 2012

Crawford Station - Chicago, Illinois

Midwest Generation

21153.032

PATRICK ENGINEERING	Sample Analysis Method	Groundwater Remediation Objective (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)	MW-1 (mg/L)
Chemical Name		Class I*	12/8/10	3/21/11	6/13/11	9/16/11	12/9/11	3/19/12
Antimony	Metals 6020	0.006	ND	ND	0.004	ND	ND	ND
Arsenic	Metals 6020	0.05	ND	ND	0.0016	0.0046	0.0047	0.0014
Barium	Metals 6020	2.0	0.067	0.084	0.08	0.062	0.043	0.065
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	0.0046	0.0094	0.0054	0.0037	0.0033	0.0094
Copper	Metals 6020	0.65	ND	ND	ND	ND	ND	ND
Cyanide	Dissolved 9014	0.2	ND	ND	ND	ND	ND	ND
Iron	Metals 6020	5.0	ND	**5.8**	**5.1**	5.0	4.6	**6.3**
Lead	Metals 6020	0.0075	ND	ND	ND	ND	ND	ND
Manganese	Metals 6020	0.15	**1.4**	**2.7**	**2.2**	**1.9**	**1.5**	**2.8**
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND
Nickel	Metals 6020	0.1	0.0095	0.01	0.0074	0.0063	0.0074	0.01
Selenium	Metals 6020	0.05	ND	ND	ND	ND	ND	ND
Silver	Metals 6020	0.05	ND	ND	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND
Zinc	Metals 6020	5.0	ND	ND	ND	ND	ND	ND
Boron	Metals 6020	2	1.4	0.86	0.89	1.8	0.84	0.68
Sulfate	Dissolved 9038	400	**950**	**800**	**670**	**750**	**1,000**	**810**
Chloride	Dissolved 9251	200	**610**	**9,100**	**9,000**	**3,200**	**1,700**	**8,700**
Nitrogen/Nitrate	Nitrogen By calc	10	ND	ND	ND	ND	ND	ND
Total Dissolved Solids	Dissolved 2540C	1,200	**2,700**	**18,000**	**17,000**	**11,000**	**5,900**	**15,000**
Fluoride	Dissolved 4500 FC	4	0.35	0.17	0.25	0.28	0.35	0.24
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	0.061	ND	ND	ND	ND	ND
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	ND	ND	ND	ND	ND	ND

Notes:

*Class I Groundwater Standards from 35 IAC Part 620

Bold values show exceedences of 35 IAC Part 620

ND-non detect

mg/L-milligrams per liter

AMENDMENTS

[ ] - Value amended from original Table 3 (May 11, 2012).

[ ] - Value has not changed; font has been changed from normal to bold.

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Table 3

GROUNDWATER ANALYTICAL RESULTS - AMENDED JULY 2012

Crawford Station - Chicago, Illinois

Midwest Generation

21153.032

PATRICK ENGINEERING	Sample Analysis Method	Groundwater Remediation Objective (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)	MW-2 (mg/L)
Chemical Name		Class I*	12/8/10	3/21/11	6/13/11	9/16/11	12/9/11	3/19/12
Antimony	Metals 6020	0.006	ND	ND	ND	ND	ND	**0.018**
Arsenic	Metals 6020	0.05	ND	ND	ND	ND	ND	ND
Barium	Metals 6020	2.0	0.061	0.038	0.036	0.035	0.033	0.24
Beryllium	Metals 6020	0.004	ND	ND	ND	ND	ND	ND
Cadmium	Metals 6020	0.005	ND	ND	ND	ND	ND	ND
Chromium	Metals 6020	0.1	ND	ND	ND	ND	ND	ND
Cobalt	Metals 6020	1.0	0.0052	0.005	0.004	0.0021	ND	ND
Copper	Metals 6020	0.65	ND	ND	ND	ND	ND	ND
Cyanide	Dissolved 9014	0.2	ND	ND	ND	ND	ND	ND
Iron	Metals 6020	5.0	0.29	0.93	ND	ND	ND	ND
Lead	Metals 6020	0.0075	ND	ND	ND	ND	ND	ND
Manganese	Metals 6020	0.15	**1.1**	**1.2**	**1.3**	**0.65**	**0.42**	**0.31**
Mercury	Mercury 7470A	0.002	ND	ND	ND	ND	ND	ND
Nickel	Metals 6020	0.1	0.015	0.014	0.014	0.011	0.015	0.017
Selenium	Metals 6020	0.05	ND	ND	ND	ND	ND	ND
Silver	Metals 6020	0.05	ND	ND	ND	ND	ND	ND
Thallium	Metals 6020	0.002	ND	ND	ND	ND	ND	ND
Zinc	Metals 6020	5.0	ND	ND	ND	ND	ND	ND
Boron	Metals 6020	2	2	1.9	1.9	1.9	1.2	1.7
Sulfate	Dissolved 9038	400	**1,600**	**1,400**	**1,000**	**1,100**	**1,900**	**1,200**
Chloride	Dissolved 9251	200	**2,000**	**2,000**	**2,400**	**1,500**	**2,200**	**2,200**
Nitrogen/Nitrate	Nitrogen By calc	10	ND	ND	ND	ND	ND	ND
Total Dissolved Solids	Dissolved 2540C	1,200	**6,800**	**6,700**	**7,300**	**5,600**	**7,200**	**7,200**
Fluoride	Dissolved 4500 FC	4	0.3	0.21	0.22	0.31	0.25	0.21
Nitrogen/Nitrite	Dissolved 4500 NO2	NA	0.065	ND	ND	0.028	ND	ND
Nitrogen/Nitrate/Nitrite	Dissolved 4500 NO3	NA	ND	ND	ND	ND	ND	ND

Notes:

*Class I Groundwater Standards from 35 IAC Part 620

Bold values show exceedences of 35 IAC Part 620

ND-non detect

mg/L-milligrams per liter

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